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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-1984

ERIC D. LEAKE
25955 Jumano Drive
Moreno Valley, California 92551

A C C U S A T I O N

Respiratory Care Practitioner License No. 21134

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about November 19, 1999, the Respiratory Care Board issued Respiratory Care Practitioner License Number 21134 to Eric D. Leake (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references

are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“ . . .

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction. . . .”

7. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.”

8. Section 490 of the Code states:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or

1 duties of the business or profession for which the license was issued. A conviction within
2 the meaning of this section means a plea or verdict of guilty or a conviction following a
3 plea of nolo contendere. Any action which a board is permitted to take following the
4 establishment of a conviction may be taken when the time for appeal has elapsed, or the
5 judgment of conviction has been affirmed on appeal, or when an order granting probation
6 is made suspending the imposition of sentence, irrespective of a subsequent order under the
7 provisions of Section 1203.4 of the Penal Code.”

8
9 9. California Code of Regulations, Title 16, section 1399.370, states:

10 “For the purposes of denial, suspension, or revocation of a license, a crime or act
11 shall be considered to be substantially related to the qualifications, functions or duties of a
12 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
13 perform the functions authorized by his or her license or in a manner inconsistent with the
14 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
15 those involving the following:

16 “ . . .

17 “(c) Conviction of a crime involving driving under the influence or reckless driving
18 while under the influence. . . .”

19 COST RECOVERY

20 10. Section 3753.5, subdivision (a) of the Code states:

21 "In any order issued in resolution of a disciplinary proceeding before the board, the
22 board or the administrative law judge may direct any practitioner or applicant found to
23 have committed a violation or violations of law to pay to the board a sum not to exceed the
24 costs of the investigation and prosecution of the case."

25 11. Section 3753.7 of the Code states:

26 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
27 include attorney general or other prosecuting attorney fees, expert witness fees, and other
28 administrative, filing, and service fees."

12. Section 3753.1, subdivision (a) of the Code states:

"An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation."

CAUSE FOR DISCIPLINE

(Conviction of a Crime)

13. Respondent is subject to disciplinary action under sections 3750, subdivision (d), 3752 and 490 of the Code, and California Code of Regulations, Title 16, section 1399.370, subdivision (c), in that he was convicted of a crime substantially related to the qualifications, functions or duties of a respiratory care practitioner. The circumstances are as follows:

A. On or about December 27, 2004, in a criminal proceeding entitled *People v. Eric Dwayne Leake*, in Superior Court, Riverside County, Case Number SWM032551, respondent was convicted by a plea of guilty to the crime of driving with .08% or higher blood alcohol level, a violation of Vehicle Code section 23152, subdivision (b).

B. On or about January 4, 2005, respondent was placed on probation for three years. The terms and conditions of his probation included serving 96 hours in county jail, payment of \$1,621.40 in fines, completion of a drinking driver program, and restriction of his driving privilege for three months.

C. The facts and circumstances surrounding this offense are as follows:

On or about October 1, 2004, a California Highway Patrol Officer made an enforcement stop after he observed respondent make an illegal u-turn. Upon contact with respondent, the officer detected a strong odor of alcohol on his breath, and observed that his eyes were bloodshot, his speech was slow, and his demeanor was dazed. When asked if he had been drinking, respondent stated he had two beers. Respondent failed the field sobriety tests. The results of his breath test indicated his blood alcohol level was .09%.

1 Respondent was arrested and charged with driving under the influence of
2 alcohol, a violation of Vehicle Code section 23152, subdivision (a), and driving with .08%
3 or higher blood alcohol level, a violation of Vehicle Code section 23152, subdivision (b).

4 DISCIPLINE CONSIDERATIONS

5 14. To determine the degree of discipline, if any, to be imposed on Respondent,
6 Complainant alleges that on or about September 17, 1999, in a prior disciplinary action entitled In
7 the Matter of the Statement of Issues Against Eric Leake before the Respiratory Care Board of
8 California, in Case Number S-271, respondent was charged with a conviction in 1997, of driving
9 under the influence of alcohol and with a conviction in 1994, of driving with .08% or higher blood
10 alcohol level. The Board issued a decision effective November 19, 1999, in which Respondent
11 was issued a conditional license which was placed on probation for three years with various terms
12 and conditions. That decision is incorporated herein by reference.

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28 PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 21134, issued to Eric D. Leake;
2. Ordering Eric D. Leake to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: July 13, 2005

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant